

CHRISTOPHER HAYS, State Bar No. 59480
Law Offices of Christopher Hays
One Embarcadero Center, Suite 500
San Francisco, California 94111
Telephone: (415) 398-0848
Facsimile: (415) 931-0444
Email: <hays-sf@pacbell.net>

Attorneys for Defendants
KEVIN VU and CAFE BONITA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SINHDARELLA, INC.

No. C 07 04353 WHA

vs.

SUPPLEMENTAL MEMORANDUM
OF POINTS AND AUTHORITIES
IN OPPOSITION TO MOTION
FOR PRELIMINARY INJUNCTION

KEVIN VU, etc., et al.,

Defendants.

Hearing Date: 7 February 2008
Time: 8:00 a.m.
Courtroom: 9

Kevin Vu ("Vu") submits the following supplemental points and authorities in opposition to the motion of Plaintiff Sinhdarella, Inc. for a preliminary injunction herein.

To demonstrate that it is likely to prevail on its California state law trademark infringement claims, Plaintiff must establish that there is a likelihood of confusion in the marks or in the appearance of the Plaintiff's and Vu's restaurants.

In reality, the signs are markedly different, the interiors are markedly different, and the Menus are markedly different.

If one looks at the two signs depicted in Complaint Exhibits B and I, although the words are the same, the font, style (italicized vs. Non-italicized), and the placement of the colors is entirely different.

Likewise, if one looks at the restaurant interiors depicted in Complaint

1 Exhibits C and K, the colors, style, furnishings, tables, and chairs are radically
2 different.

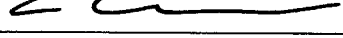
3 Similarly, the Menus shown in Complaint Exhibits D and J differ radically
4 in categories, number and description of main courses, and the presence or
5 absence of pictures of the main courses.

6 The only competent, non-Hearsay evidence of *actual* confusion is the
7 *single* incident in August 2006, when a friend of Plaintiff's President and four of her
8 friends visited Vu's restaurant (Appendix of Customer Declarations in support of
9 motion). The Court should not disregard the possibility that this event may have
10 been "staged."

11 The extraordinary remedy of granting a preliminary injunction should
12 never be granted based upon such a dearth of evidence.

13 Dated: 8 February 2008.

14 Respectfully Submitted
15 Law Offices of Christopher Hays

16 By 
17 Christopher Hays
18 Attorneys for Defendants
19 KEVIN VU and CAFE BONITA, INC.
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

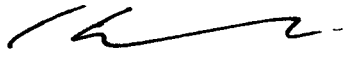
I am employed by Law Offices Of Christopher Hays in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is One Embarcadero Center, Suite 500, San Francisco, California 94111.

On 8 February 2008 I served the foregoing document(s) described as SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION; DECLARATION OF KEVIN VU; DECLARATION OF CHRISTOPHER HAYS on the interested parties in this action as stated on the attached service list as follows:

- X By placing true copies thereof enclosed in sealed envelope(s) addressed as stated on the attached service list
BY PERSONAL SERVICE
I delivered such envelope(s) by hand to the offices of the addressee(s).
- X BY MAIL
I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice such envelope(s) would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
BY OVERNIGHT MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing via _____. Under that practice such envelope(s) would be deposited at an authorized _____ location on that same day with delivery fees fully provided for at San Francisco, California, in the ordinary course of business.
- X BY E-MAIL:
On 8 February 2008, at approximately 11:45 am, I served the above stated document(s) by e-mail directed to the parties as indicated of the attached service list.

Executed on 8 February 2008 at San Francisco, California.

- X (FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.



Christopher Hays

ATTACHED SERVICE LIST

Michael W. De Vries, Esq.
Andrew J. Fossum, Esq.
Latham & Watkins
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626

<mike.devries@lw.com>
<Andrew.Fossum@lw.com>